Zango Inc v. PC Tools Pty Ltd Doc. 21 Att. 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOGAN SIMIOS, individually and on behalf of all persons similarly situated,	)	
Plaintiff,	)	
v.	)	
	)	Case No. 05C5235
180SOLUTIONS, INC. and JOHN DOES 1-100	)	JURY DEMANDED
Defendants.	)	

ANSWER AND AFFIRMATIVE DEFENSES TO CLASS ACTION COMPLAINT

Defendant 180solutions, Inc. ("Defendant" or "180solutions"), by and through its attorneys, hereby submits its Answer and Affirmative Defenses to the Class Action Complaint filed on behalf of Plaintiff Logan Simios ("Plaintiff" or "Plaintiff Simios"), individually, and on behalf of all persons "similarly situated."

ANSWER TO COMPLAINT

Complaint ¶ 1

180Solutions has unlawfully used and damaged Plaintiff's computer to make money for itself, while willfully disregarding Plaintiff's rights to use and enjoy his personal property.

Defendants deceptively downloaded harmful and offensive "spyware" to Plaintiff's computer. The spyware tracked Plaintiff's Internet use, invaded his privacy, and damaged his computer. Relying on spyware as the key to getting inside Plaintiff's computer and learning his Internet browsing habits, 180Solutions invaded Plaintiff's privacy and interfered with Plaintiff's right to use and enjoy his computer. The putative Classes in this case have been violated and damaged in the same ways.

Plaintiff brings this action to enjoin Defendants' unlawful misconduct, to seek compensation for the damage caused, and to seek certification of Classes of those similarly situated.

EXHIBIT
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Answer

Defendant denies the allegations contained in Paragraph 1.

Complaint ¶ 2

Plaintiff Logan Simios is a citizen of the state of Illinois and this Judicial District.

Answer

Defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 2, and therefore denies such allegations.

Complaint ¶ 3

180Solutions, Inc. is incorporated in both Washington and New York. 180Solutions' principal place of business is in Bellevue, Washington. 180Solutions, thus, is a citizen of the states of New York and Washington.

Answer

Defendant denies that it is incorporated in New York and further denies that it is a citizen of the State of New York. Defendant admits that it is incorporated in Washington, that its principal place of business is in Bellevue, Washington, and that it is a citizen of the State of Washington.

Complaint ¶ 4

John Does 1-100 represent the individual employees, officers, agents, distributors and advertisers who assisted in the misconduct alleged herein and/or who displayed their advertisements on computers. When their identities are ascertained, they will also be named as Defendants.

Answer

Defendant has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 4, and therefore denies such allegations.

Complaint ¶ 5

This Court has personal jurisdiction over 180Solutions and venue is proper in this Judicial District because this case arises out of actions which occurred, at least in part, within this Judicial District including, inter alia:

(a) 180Solutions causes its spyware to be downloaded onto computers in this Judicial District and its spyware damages computers located in this Judicial District.

(b) 180Solutions has infected over 20 million computers and has business relationships with more than 6,000 advertisers - including dozens of Fortune 1000 companies. Upon information and belief, at least hundreds of thousands of the infected computers and dozens (if not hundreds) of these advertisers are located within this Judicial District.

Answer

Defendant denies that it has infected over 20 million computers, denies that it has caused damage to computers located in this Judicial District, denies that its software applications are "spyware," and further denies that Plaintiff has alleged any valid claims. Defendant admits that it has business relationships with several thousand advertisers, including many Fortune 1000 companies. Defendant denies that "at least hundreds of thousands of the infected computers" and "dozens (if not hundreds) of these advertisers are located within this Judicial District," and Defendant denies that venue is proper in this Judicial District. Defendant has insufficient knowledge or information to admit or deny the remaining allegations of Paragraph 5, and therefore denies such allegations.

Complaint ¶ 6

Pursuant to the Class Actions Fairness Act of 2005, this Court has subject matter jurisdiction to hear the pending claims because the amount in controversy exceeds $5,000,000 and members of the putative Plaintiff Class are from different states than 180Solutions.

Answer

The allegations in Paragraph 6 state legal conclusions to which no response is required. To the extent that any response is required, Defendant denies the allegations contained in Paragraph 6.

Complaint ¶ 7

> Subject matter jurisdiction is also appropriate because Plaintiff has brought Federal claims pursuant to the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 ("CFAA") and the Electronic Communications Privacy Act, 18 U.S.C. § 2707, 2511, 2520 ("ECPA").

Answer

The allegations in Paragraph 7 state legal conclusions to which no response is required. To the extent that any response is required, Defendant admits that Plaintiff purports to bring claims pursuant to the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 ("CCFA"), and the Electronic Communications Privacy Act, 18 U.S.C. §§ 2707, 2511, 2520 ("ECPA"), but Defendant denies that any valid claims have been alleged and denies that Plaintiff is entitled to receive any relief whatsoever. Defendant denies any remaining factual allegations contained in Paragraph 7.

Complaint ¶ 8

> This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because they arise out of the same common nucleus of operative fact as Plaintiff's Federal claims and would ordinarily be expected to be tried in one judicial proceeding.

Answer

The allegations in Paragraph 8 state legal conclusions to which no response is required. However, to the extent a response is required, Defendant denies that any valid claims have been alleged and denies that Plaintiff is entitled to receive any relief whatsoever. Defendant denies any remaining factual allegations contained in Paragraph 8.

Complaint ¶ 9

As used herein, "spyware" describes computer software downloaded to an end-user's computer over the Internet, without consent, that permits the company which downloaded the software (i.e., the spyware company) to track, profile, and analyze a computer user's behavior, for the purpose of sending him or her targeted advertising, which the spyware company can place for its "clients".1

Answer

Defendant denies the allegations contained in Paragraph 9, except Defendant admits that Paragraph 9 contains Plaintiff's purported definition of "spyware," and that the text in the footnote to Paragraph 9 purports to set forth definitions of "spyware" that one might find by utilizing the Google.com search engine.

Complaint ¶ 10

180Solutions boasts in marketing literature that it is able to provide advertisers with "a 360-degree view of the user's behavior -- 24 hours a day, 7 days a week." For example, if a computer infected with 180Solutions' spyware is browsing/viewing music-related Internet sites, the spyware sends a signal of such activity back to 180Solutions, which then targets the computer user with advertisements from competing music companies who have paid for access to these computers via the unlawfully-installed spyware. Likewise, if a computer user types in a search phrase (i.e., "Maui hotels") into a search engine (such as Google), 180Solutions intercepts the search and sends an advertisement on behalf of one of its customers (such as a hotel in Maui) that paid 180Solutions to monitor the searches performed by computer users.

Answer

Defendant admits that, at certain times and with respect to certain applications, its website description of the anonymous data generated by its then-16 million unique visitors, which enabled it to license "complete, raw click-stream and demographic data to companies that provide competitive intelligence to their clients," included the following statement: "Because of

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[1] There are many different definitions of "spyware" according to Google.com, including: (1) "also known as 'adware', [i]t is a hidden software program that transmits user information via the Internet to advertisers in exchange for free downloaded software." (2) "Software that tracks usage and reports to others, such as advertisers. Usually the tracking is concealed from the user of the software."

the unique capabilities of our patent pending technology, we are able to see EVERY site that a user visits, what ads they see, what they click on and what they purchase; all the while protecting the user's privacy by letting them remain anonymous. Where most data collection companies can cookie users on particular sites, we are able to see a 360-degree view of the user's behavior – 24 hours a day, 7 days a week – on every site on the Web." Defendant denies the remaining allegations contained in Paragraph 10.

Complaint ¶ 11

> 180Solutions pays its distributors, who are its agents, money each time they infect a computer with 180Solutions' spyware. These infections occur over the Internet on various sites such as those offering games and music. 180Solutions recruits distributors, at least in part, through unsolicited spam emails.

Answer

Defendant admits that it pays its distributors for distributing Defendant's software. Defendant admits that its distributors distribute Defendant's software over the Internet on various sites, such as those offering free games and music. Defendant denies the remaining allegations contained in Paragraph 11.

Complaint ¶ 12

> In a 2004 interview with the Los Angeles Times, a 180Solutions senior employee characterized distributors as: "guys in Bermuda, offshore. They're the online equivalent of spammers" and he further admitted that 180Solutions "had not been careful enough in overseeing" such companies.

Answer

Defendant denies that the first (incomplete) quotation in Paragraph 12, taken from an unidentified Los Angeles Times article, is a characterization of "distributors," and denies that the second purported quotation from the same article is, in fact, a quotation, or is reported in the article as a quotation. Furthermore, Defendant moves that this second purported quotation be stricken from the Complaint. Defendant denies the remaining allegations contained in Paragraph 12.

Complaint ¶ 13

180Solutions currently has its spyware installed on approximately 20,000,000 computers.

Answer

Defendant denies the allegations contained in Paragraph 13.

Complaint ¶ 14

The reason 180Solutions infects computers with spyware is because once the spyware is installed, advertisers pay 180Solutions to spy on the Internet sites visited by computer users and to send targeted advertising to them.

Answer

Defendant denies the remaining allegations contained in Paragraph 14.

Complaint ¶ 15

180Solutions deceptively distributes its spyware files (deceptively referred to as, inter alia, "nCase") and prevents users from removing the files once installed.

Answer

Defendant denies the allegations contained in Paragraph 15.

Complaint ¶ 16

For example, the Los Angeles Times has reported that "180Solutions programs have been installed through Microsoft security holes" and further that:

> 180's program, nCase, is notorious in the antispyware community both for the amount of advertisements it sends to individual computers (hundreds per day) and its near impossibility to remove. Many spyware programs, like nCase, hide themselves so well they can't be removed even if found by standard uninstall features of Microsoft Windows."

Answer

Defendant admits that Paragraph 16 includes incomplete quotes from more than one unidentified Los Angeles Times article, but denies that the statements as presented in Paragraph 16 provide an accurate representation of any issues relating to installation and removal of any of Defendant's software applications. Defendant denies all remaining allegations contained in Paragraph 16.

Complaint ¶ 17

180Solutions engages in uniformly deceptive misconduct to download its spyware. This is how it's done: 180Solutions and its agents bundle spyware into other legitimate software which is available to be downloaded for "free" on the Internet. For example, a computer user may find a supposedly "free" software program on the Internet, such as a video game. When the computer user downloads and installs that "free" game, he or she simultaneously (but unknowingly) downloads 180Solutions spyware, since it was bundled into the game being downloaded.

Answer

Defendant denies the allegations contained in Paragraph 17.

Complaint ¶ 18

A March 2005 study of 180Solutions by Sunbelt Software[2] concluded that:

> 180 seems unable or unwilling to rein in distributors ("partners") who resort to unethical means of presenting 180's software to users and even installing it on users' PCs through security exploits in order to get paid for those installations.
>
> ***
>
> Given the functionality of 180Solutions' software as well as its checkered distribution history -- a history which includes rampant "force-installs" of 180's software on users' PCs without those users' full knowledge and consent -- the anti-spyware community is entirely justified in being skeptical of 180's claims to have reformed its software and distribution practices.

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[2] Sunbelt Software is a leading international software company that studies spyware. It offers products to protect and secure computer systems from spyware and spam and undertook a detailed 56 page study of 180Solutions' software in March 2005.

Answer

Upon information and belief, Defendant admits that Sunbelt Software published a purported "white paper" in March 2005, and that Paragraph 18 contains portions of the text from the "white paper." Defendant affirmatively avers that Sunbelt Software is a maker and marketer of products that it claims guard against "spyware, including, at the time, a product called "CounterSpy," which it described as an "anti-spyware application." Defendant denies the accuracy and validity of the "white paper," denies the veracity of the statements from the "white paper" that are included in Paragraph 18, denies that Paragraph 18 accurately presents a block quotation of material from the "white paper," and denies any remaining allegations contained in Paragraph 18 (including the footnote to Paragraph 18).

Complaint ¶ 19

Computer users do not consent, let alone have knowledge, that spyware is being installed on their computers. This is because 180Solutions has deceptively caused its spyware to download without consent or knowledge through deceptive methods including, inter alia, automatic installations, viruses, and through exploiting security deficiencies in Microsoft's Internet Explorer. In all of these methods, computer users are not told of, or even given the opportunity to stop, spyware infections.

Answer

Defendant denies the allegations contained in Paragraph 19.

Complaint ¶ 20

180Solutions' spyware is also deceptively distributed with other spyware from other companies. For example, on many occasions, 180Solutions' spyware is co-bundled with spyware from DirectRevenue, another spyware company. Thus, a computer is infected with spyware from both companies in the same way. DirectRevenue's spyware distribution practices are the subject of a pending lawsuit in this Judicial District, Sotelo v. DirectRevenue, et al, 05-CV-2562.

Answer

Defendant admits that the litigation captioned *Sotelo v. DirectRevenue, LLC, et al.*, Case No. 05C2562, is pending in the Northern District of Illinois before The Honorable Robert W. Gettleman. Defendant denies all other allegations contained in Paragraph 20. Defendant affirmatively avers that it diligently polices against misuse of its software by distributors and others, and that it is in the forefront of the industry in monitoring distributor activity and terminating distributor agreements with offending distributors.

Complaint ¶ 21

180Solutions lies to computer users about its spyware. For instance, 180Solutions displays the following message to computer users about its "software":

NO SPYWARE
PRIVACY PLEDGE
NO HIDING
NO SPYING
NO SHARING

Answer

Defendant denies the allegations contained in Paragraph 21.

Complaint ¶ 22

The above advertisement is false. 180Solutions software does contain spyware, it does hide on a computer so that it cannot be easily detected, it does invade privacy by monitoring Internet sites visited, and it shares data with others by allowing third parties to reap the benefit of targeted advertisements by providing them "a 360-degree view of the user's behavior -- 24 hours a day, 7 days a week."

Answer

Defendant denies the allegations as stated in Paragraph 22.

Complaint ¶ 23

After the deceptive installation of its spyware, 180Solutions then engages in a uniformly deceptive course of conduct to prevent users from removing the spyware after it is installed. Former employees of 180Solutions have reported

> that 180Solutions makes the process to uninstall its spyware "intentionally difficult for consumers."

Answer

Defendant has insufficient knowledge or information to admit or deny the truth of the allegation that "Former employees of 180Solutions have reported that 180Solutions makes the process to uninstall its spyware 'intentionally difficult for consumers,'" and therefore, Defendant denies this allegation. Furthermore, to the extent that Plaintiff presents this allegation in the form of a quotation, purportedly from an unidentified source, Defendant moves that it be stricken from the Complaint. Defendant denies the remaining allegations contained in Paragraph 23.

Complaint ¶ 24

> 180Solutions also falsely tells consumers that if its spyware is removed, other software on the user's computer will not operate.

Answer

Defendant denies the allegations contained in Paragraph 24.

Complaint ¶ 25

> 180Solutions markets its spyware under various names, often having no apparent relationship to 180Solutions so that users cannot figure out how to complain about the spyware or to remove it. Upon information and belief, the various misleading file names used by 180Solutions include, *inter alia*, msbb.exe, saie.exe, salm.exe, saap.exe, sain.exe, zango.exe, and nCase/rnd.

Answer

Defendant admits that its software has used filenames such as msbb.exe, saie.exe, salm.exe, saap.exe, sain.exe, zango.exe, and nCase/rnd, but Defendant denies that such filenames are, in any way, "misleading." Defendant denies the remaining allegations contained in Paragraph 25.

Complaint ¶ 26

> 180Solutions utilizes a "resuscitator" program that is installed by 180Solutions' spyware into Microsoft directory of files. This program is

> randomly named and designed to avoid detection by anti-spyware applications. Moreover, the sole purpose of this program is to monitor the installed 180Solutions' spyware and scare a user to reinstall the spyware files should they be removed. For example, 180Solutions causes a "WARNING" to appear that tells computer users that removing its spyware "may cause some programs not to run as expected."

Answer

Defendant admits that it has used a program that is installed by Defendant's software into a Microsoft directory of files, and that this program, called the "client repair tool," gives the user the options to (1) re-install Defendant's software, (2) leave the software uninstalled and clean up any remaining files or settings relating to Defendant's software, or (3) remind the user later. Defendant admits that, only under limited circumstances, if a computer user attempts to remove Defendant's software, a warning appears that indicates that removal of Defendant's software "may cause some programs not to run as expected." Defendant denies the other allegations contained in Paragraph 26.

Complaint ¶ 27

> 180Solutions' spyware causes computers to slow down, takes up bandwidth over an Internet connection, uses up memory on a computer, utilizes pixels and screen-space on monitors, causes the loss of data, and frustrates computer users. Defendants' spyware and popup advertisements decrease productivity by requiring that hours be spent figuring out how to get them off of a computer, closing advertising windows, and waiting for a slower machine to operate. Furthermore, computer users are forced to keep their computers running longer (due to the slowed performance) which utilizes more electricity, decreases the useful life of a computer, and causes increased Internet access charges. The cumulative impact of not only multiple ads, but also the threat of future ads and monitoring, impedes computer usage. The cost to purchase software to effectively remove spyware, unwanted advertisements, and guard against future infections is approximately $30 per year per computer.

Answer

Defendant denies the allegations contained in Paragraph 27.

Complaint ¶ 28

Indeed, in its State of Spyware report for 2005, Webroot Software, Inc. (a leading international software company) reported as one of the Internet's "Top Threats" for spyware, 180Solutions' spyware and noted that it may "send information about your Web surfing habits to its controlling servers whenever you are online, which may slow your Web browser's performance [and] may download third-party programs on your computer, resulting in unwanted programs being installed without your knowledge or consent."

Answer

Defendant admits that Paragraph 28 purports to present paraphrased quotes from a Webroot Software "State of Spyware" report for 2005, but Defendant denies the veracity of the statements included in Paragraph 28 as related to Defendant's software. Defendant denies all remaining allegations contained in Paragraph 28.

Complaint ¶ 29

180Solutions infected Logan Simios' computer with spyware during 2005. The spyware was installed without any notice and without the opportunity to consent. As a result of the spyware installations, Logan Simios' computer has been damaged as alleged above.

Answer

Defendant denies the allegations contained in Paragraph 29.

Complaint ¶ 30

Plaintiff brings each of the claims in this action in his own name and on behalf of a class of all persons similarly situated ("the Class") pursuant to Federal Rule of Civil Procedure 23.

Answer

Defendant admits that Plaintiff purports to bring each of the claims in this action in his own name and on behalf of a purported Class of all persons similarly situated, but Defendant denies that Plaintiff has alleged any viable claim against Defendant, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever. Defendant denies any remaining allegations contained in Paragraph 30.

Complaint ¶ 31

This case is brought on behalf of two Classes. The Class definitions are as follows:

Class "A" "All persons and entities in the United States who had 180Solutions' spyware installed on their computers, in or after September 12, 2002."

Class "B" "All persons and entities in Illinois who had 180Solutions' spyware installed on their computers, in or after September 12, 2002."

Answer

Defendant admits that Plaintiff purports to define two Classes, but Defendant denies that the Class definitions are proper and denies that Plaintiff is a proper or adequate representative of the purported Classes. Defendant further denies that Plaintiff has alleged any viable claim against Defendant, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever. Defendant denies all remaining allegations contained in Paragraph 31.

Complaint ¶ 32

Plaintiff is a member of each Class. The Class is so numerous that joinder of all members is impractical. Upon information and belief, there are approximately 20,000,000 affected computers. Upon information and belief, Class A has many million Class members, and Class B has at least hundreds of thousands of Class members.

Answer

Defendant has insufficient knowledge or information to admit or deny that Plaintiff is a member of each purported Class, and therefore denies this allegation. Defendant has insufficient knowledge or information to admit or deny that the purported Class is so numerous that joinder of all members is impractical. Defendant denies that there are approximately 20,000,000 "affected computers." Whether "Class A has many million Class members, and Class B has at least hundreds of thousands of Class members" calls for legal conclusions to which no response is required. To the extent that any response is required, Defendant denies such claims and all remaining claims contained in Paragraph 32.

Complaint ¶ 33

There are questions of law and fact which are common to the Class which predominate over any questions affecting only individual members, including:

a. Whether Defendants engaged in deceptive business practices in causing spyware to be downloaded onto the computers of the members of Class A and Class B;

b. Whether Defendants' above alleged conduct violates the Computer Fraud and Abuse Act;

c. Whether the Electronic Communications Privacy Act applies to spyware installations and monitoring;

d. Whether Defendants have committed a trespass to chattels;

e. Whether 180Solutions intended to deceive the members of Class A and Class B into downloading software;

f. Whether Defendants violated the Illinois Consumer Fraud Act; and

g. Whether Defendants' conduct in downloading bundled software constitutes Computer Tampering under the Illinois Criminal Code.

Answer

Defendant denies each allegation contained in Paragraph 33.

Complaint ¶ 34

The representative party will fairly and adequately protect the interest of the Class. Plaintiff's claims are typical of the claims of the Class. All are based upon the same factual and legal theories. Plaintiff has retained counsel who is competent and experienced in class litigation.

Answer

The allegations in Paragraph 34 state legal conclusions to which no response is required. To the extent that any response is required, Defendant denies that the representative party will fairly and adequately protect the interest of the purported Class; Defendant denies that Plaintiff's claims are typical of the claims of the purported Class; Defendant denies that all claims are based upon the same factual and legal theories; and Defendant lacks sufficient information to admit or deny whether Plaintiff has retained counsel who is competent and experienced in class litigation, and therefore denies such allegations.

Complaint ¶ 35

> The class action is an appropriate method for the fair and efficient adjudication of the controversy. The intentionally deceptive conduct of 180Solutions makes it difficult to sue them, let alone ascertain who they are for a lawsuit. Furthermore, the likely individual recovery would not warrant an individual lawsuit due to the expensive nature of litigation, hiring experts, and paying lawyers.

Answer

The allegations in Paragraph 35 state legal conclusions to which no response is required. To the extent that any response is required, Defendant denies the allegations contained in Paragraph 35.

Count I
Computer Fraud and Abuse Act
(Nationwide Class Sought on behalf of Class A)

Complaint ¶ 36

Plaintiff re-alleges paragraphs 1 through 35 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 35 as if fully set forth herein.

Complaint ¶ 37

> The CFAA provides for a cause of action against anyone who "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains ... information . . . if the conduct involved an interstate or foreign communication. . .". 18 USC § 1030.

Answer

Defendant objects to paragraph 37 on the basis of relevance because 18 U.S.C. § 1030 only provides for recovery in a civil action based on violations of 18 U.S.C. § 1030(a)(5). However, to the extent that a response is required, subject to the preceding objection, Defendant admits that the CFAA provides for a cause of action against one who "intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information . . . if the conduct involved an interstate or foreign communication." 18 U.S.C. § 1030(a)(2)(C). Defendant denies that it has, in any way, violated the CFAA, denies that Plaintiff has alleged any viable claim against Defendant under the CFAA, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 38

> 18 USC § 1030(g) provides that "[a]ny person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief.

Answer

Defendant admits that 18 USC § 1030(g) provides that "[a]ny person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief." Defendant denies that 18 U.S.C. § 1030(g) gives Plaintiff a viable claim against Defendant, denies that Plaintiff has alleged any viable claim against Defendant, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 39

> 180Solutions intentionally accessed Plaintiff's computer and the computers of the members of Class A, without consent, by installing spyware on these computers and by communicating with the computers via advertisements, software updates, and Internet use monitoring once the spyware was installed.

Answer

Defendant admits that its software allows for advertisements and software updates to be sent to computers on which its software has been installed. Defendant is without sufficient knowledge or information as to whether Plaintiff or any of the members of the purported Class installed Defendant's software, and therefore, Defendant denies such allegations. Defendant denies the remaining allegations contained in Paragraph 39.

Complaint ¶ 40

> Plaintiff's computer and the computers of the members of Class A are used in interstate communications and commerce and are protected computers within the meaning of the CFAA.

Answer

The allegations in Paragraph 40 state legal conclusions to which no response is required. However, to the extent that any response is required, Defendant states that it is without sufficient knowledge or information as to whether such computers are used in interstate communications and commerce, and therefore, Defendant denies such allegations. Furthermore, Defendant denies that it has, in any way, violated the CFAA, denies that Plaintiff has alleged any viable claim against Defendant under the CFAA, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 41

> Plaintiff and the members of Class A have been damaged as a result as alleged herein. Specifically, by 180Solutions' release of each of its viruses (such as nCase), there has been loss and damage to one or more persons (and specifically to the members of Class A) during each of the past years aggregating well in excess of $5,000.

Answer

Defendant denies the allegations contained in Paragraph 41.

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Complaint ¶ 42

Likewise, 180Solutions' spyware constitutes a threat to public health or safety, namely the safety of the public using the World Wide Web. As a result of spyware, including 180Solutions' "top threat" spyware, reliable and generally accepted statistics now show that 91% of internet users have changed their online behavior for fear of becoming victims of spyware, 81% of internet users say they have stopped opening email attachments unless they are sure these documents are safe, 48% of internet users say they have stopped visiting particular Internet sites that they fear might deposit unwanted programs on their computers, 25% of internet users say they have stopped downloading music or video files from peer-to-peer networks to avoid getting unwanted software programs on their computers, and 93 million American Internet users (68% of them) have had computer trouble in the past year that is consistent with problems caused spyware and viruses. Spyware is also the reported as one of the leading cause of computer complaints, indeed, one third of Microsoft operating system crashes are a result of spyware. The threat to public safety is growing at alarming rates. The number of spyware distribution sites (such as those used to distribute 180Solutions' spyware) has reportedly quadrupled during 2005 alone according to industry research from Webroot Software, Inc. Finally, the public health and safety is also threatened by 180Solutions' spyware because it was distributed at an Internet site (and thus financially supported an Internet site) showing child pornography.

Answer

Defendant lacks knowledge or information regarding the unattributed statistics presented in Paragraph 42, and therefore, Defendant denies the same and further denies that the statistics are applicable to users of Defendant's software. Defendant denies all remaining allegations contained in Paragraph 42.

Count II
Electronic Communications Privacy Act /Wiretap Act
(Nationwide Class Sought on behalf of Class A)

Complaint ¶ 43

Plaintiff re-alleges paragraphs 1 through 42 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 42 as if fully set forth herein.

Complaint ¶ 44

> The ECPA provides a private right of action against one who "intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication." 18 U.S.C.A. § 2707 and 2520.

Answer

Defendant admits that the ECPA provides a private right of action against one who "intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication." 18 U.S.C. §§ 2707, 2511, 2520. Defendant denies that the ECPA is applicable to Defendant, and denies that it has, in any way, violated the ECPA. Furthermore, Defendant denies that Plaintiff has alleged any viable claim against Defendant under the ECPA, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 45

> 180Solutions intentionally and without consent intercepted Plaintiff's and the members of Class A's communications with Internet sites and search engines for tortious purposes, specifically to spy on their private Internet browsing use and to trespass on their computer. At this time, 180Solutions intentionally accessed the spyware that it had placed on these computers in electronic storage. 180Solutions also intentionally used its spyware to intercept communications by Plaintiff and Class A to Internet sites.

Answer

Defendant denies the allegations contained in Paragraph 45.

Complaint ¶ 46

> 180Solutions further disclosed to others the content of electronic communications knowing that the communications were illegally obtained.

Answer

Defendant denies the allegations contained in Paragraph 46.

Complaint ¶ 47

180Solutions collected Plaintiff's personal information and the personal information of the members of Class A without consent or compensation, and to misappropriate personality, thereby obtaining detailed, free market research and consumer analysis rather than paying for it.

Answer

Defendant denies the allegations contained in Paragraph 47.

Complaint ¶ 48

As a result of Defendants' misconduct, Plaintiff and Class A were damaged as alleged herein. Pursuant to Section 2707 of the ECPA, Plaintiff and Class A are entitled to be compensated for their damage, the Defendants' profits, or are entitled to statutory damages of $1,000 per violation, and punitive damages and attorney fees.

Answer

Defendant denies the allegations contain in Paragraph 48.

Count III
Trespass to Personal Property/Chattels-Illinois Common Law
(Illinois Class Sought on behalf of Class B)

Complaint ¶ 49

Plaintiff re-alleges paragraphs 1 through 48 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 48 as if fully set forth herein.

Complaint ¶ 50

At all times relevant hereto, Plaintiff and the members of Class B were the owners of computers or internet connections that were infected with 180Solutions' spyware.

Answer

Defendant denies that its software applications are "spyware". Defendant has insufficient knowledge or information to admit or deny the remaining allegations of Paragraph 50, and therefore denies such allegations.

Complaint ¶ 51

At all relevant times, Defendants' and/or their agents intentionally and without consent, used Plaintiff's computer and the computers of Class B and their Internet connections, gained access to their computers, monitored their Internet usage, sent advertisements to these infected computers, accessed various components and systems within these computers, obtained access to information about Plaintiff and the members of Class B and their computers, took up space on these computers, and/or dispossessed Plaintiff and the members of Class B of access to their computers.

Answer

Defendant denies the allegations contained in Paragraph 51.

Complaint ¶ 52

In doing so, Defendants intentionally intermeddled with, damaged, and deprived Plaintiff and Class B of their computers and/or Internet connections, or a portion thereof.

Answer

Defendant denies the allegations contained in Paragraph 52.

Count IV
Illinois Consumer Fraud Act
(Illinois Class Sought on behalf of Class B)

Complaint ¶ 53

Plaintiff re-alleges paragraphs 1 through 52 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 52 as if fully set forth herein.

Complaint ¶ 54

At all relevant times, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 ("Consumer Fraud Act").

Answer

Defendant admits that the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, was in effect at the times alleged by Plaintiff, but Defendant denies that the statute is applicable to Defendant, and denies that it has, in any way, violated the statute. Furthermore, Defendant denies that Plaintiff has alleged any viable claim against Defendant under the statute, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 55

Section 2 of the Consumer Fraud Act, 815 ILCS 505/2 provides:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

Answer

Defendant admits that the language contained in Paragraph 55 appears in the Consumer Fraud Act, 815 ILCS 505/2, which speaks for itself, but denies that the statute has any application to this lawsuit, and respectfully refers the Court and Plaintiff to the text of the statute for the full contents thereof. Defendant denies that it has, in any way, violated the statute, denies that Plaintiff has alleged any viable claim against Defendant under the statute, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 56

> The Consumer Fraud Act incorporates § 2 of the Uniform Deceptive Trade Practices Act by prohibiting "unfair methods of competition and unfair or deceptive acts or practices, including but not limited to ... the use or employment of any practice described in § 2 of the Uniform Deceptive Trade Practices Act."

Answer

Defendant admits that the language contained in Paragraph 56 appears in the Consumer Fraud Act, which speaks for itself, but denies that the statute has any application to this lawsuit and respectfully refers the Court and Plaintiff to the text of the statute for the full contents thereof. Defendant denies that it has, in any way, violated the statute, denies that Plaintiff has alleged any viable claim against Defendant under the statute, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 57

> The Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, provides in pertinent part, at Section 2:
>
> A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person:
>
> (1) passes off goods or services as those of another;
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> ***
>
> (9) advertises goods or services with intent not to sell them as advertised;
>
> ***
>
> (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

Answer

Defendant admits that the language contained in Paragraph 57 appears in 815 ILCS 510/1, which speaks for itself, but denies that the statute has any application to this lawsuit and respectfully refers the Court and Plaintiff to text of the statute for the full contents thereof. Defendant denies that it has, in any way, violated the statute, denies that Plaintiff has alleged any viable claim against Defendant under the statute, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 58

180Solutions engaged in deceptive and misleading advertisements by downloading its spyware onto computers while computer users thought they were downloading "free" software. This advertising is false because the software is not "free". To the contrary, the spyware gives 180Solutions and its advertisers access to engage in ongoing interference with a computer and subjects the computer user to monitoring. Furthermore, 180Solutions lies to computer users about its spyware.

Answer

Defendant denies the allegations contained in Paragraph 58.

Complaint ¶ 59

By secretly bundling its spyware with that of legitimate software programs such as games and screensavers, 180Solutions is passing off its spyware as goods or services of another.

Answer

Defendant denies the allegations contained in Paragraph 59.

Complaint ¶ 60

180Solutions has also set up its spyware to intentionally confuse, deceive, and mislead consumers into downloading its software, into keeping the software on a computer once installed, and into purchasing anti-spyware software so the advertisements will stop.

Answer

Defendant denies the allegations contained in Paragraph 60.

Complaint ¶ 61

180Solutions' software is also misleading in that it makes it difficult to remove its spyware from computers once installed as alleged herein.

Answer

Defendant denies the allegations contained in Paragraph 61.

Complaint ¶ 62

180Solutions' failure to notify consumers that its spyware damages computers, is difficult to remove from a computer, will slow down and/or damage the performance of a computer, and will result in persistent and distasteful advertising is an omission of material fact in violation of the Consumer Fraud Act.

Answer

Defendant denies the allegations contained in Paragraph 62.

Complaint ¶ 63

180Solutions intended to profit, and did actually profit, from its wrongful conduct by being able to obtain more adverting money by virtue of being downloaded onto more computers.

Answer

Defendant denies the allegations contained in Paragraph 63.

Complaint ¶ 64

180Solutions knew that its conduct was deceptive and misleading and intended for consumers to be deceived so they would download spyware along with other legitimate software. 180Solutions' method of distributing its spyware created and continues to create a substantial likelihood of confusion, deception, and misunderstanding. Such deception occurred in the course of trade and commerce.

Answer

Defendant denies the allegations contained in Paragraph 64.

Complaint ¶ 65

As a direct and proximate cause of 180Solutions' misrepresentations and deception, the damage alleged herein occurred.

Answer

Defendant denies the allegations contained in Paragraph 65.

Complaint ¶ 66

180Solutions' conduct as alleged herein constitutes an unfair practice because it is unlawful, offends public policy, it is immoral, unethical, oppressive and unscrupulous, and it results in substantial economic injury to consumers.

Answer

Defendant denies the allegations contained in Paragraph 66.

Complaint ¶ 67

Injunctive relief is warranted to stop Defendants' ongoing deceptive conduct and to prevent the ongoing invasion of the privacy of Plaintiff and the members of Class B.

Answer

Defendant denies the allegations contained in Paragraph 67.

Count V
Negligence-Illinois Common Law
(Illinois Class Sought on behalf of Class B)

Complaint ¶ 68

Plaintiff re-alleges paragraphs 1 through 67 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 67 as if fully set forth herein.

Complaint ¶ 69

180Solutions, having gained access to Plaintiff's computer and the computers of the members of Class B, had a duty not to harm the computers and impact their operation. Furthermore, 180Solutions had a duty to monitor its spyware distributors to assure that they, inter alia, obtained user consent for downloading it spyware.

Answer

The allegations in Paragraph 69 state legal conclusions to which no response is required. To the extent that any response is required, Defendant denies that it has failed to fulfill any such duties. Defendant further denies that Plaintiff has alleged any viable claim against Defendant, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 70

180Solutions breached this duty by damaging Plaintiff's and Class B members' computers and interfering with their operation and by not adequately monitoring its spyware distributors.

Answer

Defendant denies the allegations contained in Paragraph 70.

Complaint ¶ 71

As a direct and proximate result of 180Solutions' negligence, Plaintiff and the members of Class B were damaged as alleged herein.

Answer

Defendant denies the allegations contained in Paragraph 71.

Count VI
Computer Tampering -Criminal Code
(Illinois Class Sought on behalf of Class B)

Complaint ¶ 72

Plaintiff re-alleges paragraphs 1 through 71 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 71 as if fully set forth herein.

Complaint ¶ 73

Section 16D-3 of the Illinois Criminal Code (720 ILCS 5/16D-3) provides in part:

(a) A person commits the offense of computer tampering when he knowingly and without the authorization of a computer's owner, as defined in Section 15-2 of this Code, or in excess of the authority granted to him: * * *

(4) Inserts or attempts to insert a "program" into a computer or computer program knowing or having reason to believe that such "program" contains information or commands that will or may damage or destroy that computer, or any other computer subsequently accessing or being accessed by that computer, or

that will or may alter, delete or remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer, or that will or may cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such "program";

Answer

Defendant admits that the language contained in Paragraph 73 appears in Section 16D-3 of the Illinois Criminal Code (720 ILCS 5/16 D-3), which speaks for itself, but denies that the statute has any application to this lawsuit and respectfully refers the Court and Plaintiff to the full text of the statute for the contents thereof. Defendant denies that it has, in any way, violated the statute, denies that Plaintiff has alleged any viable claim against Defendant under the statute, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Complaint ¶ 74

Defendants' conduct, as alleged herein, violated Section 16(D)(3) and proximately caused the damage alleged herein.

Answer

Defendant denies the allegations contained in Paragraph 74.

Complaint ¶ 75

Section 16(D)(3), provides that:

"Whoever suffers loss by reason of a violation of subsection (a)(4) of this Section may, in a civil action against the violator, obtain appropriate relief. In a civil action under this Section, the court may award to the prevailing party reasonable attorney's fees and other litigation expenses."

Answer

Defendant admits that the language contained in Paragraph 75 appears in Section 16D-3 of the Illinois Criminal Code (720 ILCS 5/16 D-3), which speaks for itself, but denies that the statute has any application to this lawsuit and respectfully refers to the Court and Plaintiff to the full text of the statute for the full contents thereof. Defendant denies that it has, in any way, violated the statute, denies that Plaintiff has alleged any viable claim against Defendant under the statute, and denies that Plaintiff or any purported Class members are entitled to any relief whatsoever.

Count VII
Invasion of Privacy-Illinois Common Law
(Illinois Class Sought on behalf of Class B)

Complaint ¶ 76

Plaintiff's re-allege paragraphs 1 through 75 as if fully set forth herein.

Answer

Defendant re-alleges its answers to Paragraphs 1 through 75 as if fully set forth herein.

Complaint ¶ 77

Computers provide users with apparent seclusion, solitude and privacy.

Answer

Defendant denies the allegations contained in Paragraph 77.

Complaint ¶ 78

180Solutions intentionally intruded upon the solitude and seclusion of Plaintiff and the members of Class B by invading the privacy of computer use through monitoring Internet browsing habits and the personal interests of these computer users.

Answer

Defendant denies the allegations contained in Paragraph 78.

Complaint ¶ 79

The invasion by 180Solutions would be highly offensive to a reasonable person and damaged Plaintiff and the members of Class B.

Answer

Defendant denies the allegations contained in Paragraph 79.

Complaint ¶ 80

Likewise, by selling advertising to third parties based upon the private behavior of Plaintiff and the members of Class B, 180Solutions wrongfully appropriated Plaintiff's and the members of Class B's personality for commercial use.

Answer

Defendant denies the allegations contained in Paragraph 80.

GENERAL RESPONSE TO INAPPROPRIATE HEADINGS IN COMPLAINT

Throughout the Complaint, Plaintiff has included inappropriate headings that include claims and allegations of wrongdoing on the part of Defendant. The claims and allegations set forth therein are not properly pled, as they do not comply with the pleading requirements of Rule 10(b) of the Federal Rules of Civil Procedure. Therefore, no response is required to such headings, and the claims and allegations asserted therein should be stricken. However, to the extent that a response may be required, Defendant denies all such claims and allegations and moves to strike them from the Complaint.

AFFIRMATIVE DEFENSES

As separate and additional defenses, Defendant alleges as follows, without admission that Defendant carries the burden of proof or persuasion on any of the defenses set forth below:

First Affirmative Defense

The Complaint fails to state a cause of action against the Defendant upon which relief can be granted.

Second Affirmative Defense

Plaintiff has not suffered any legally cognizable injury or damage.

Third Affirmative Defense

Any legally cognizable injury or damage that Plaintiff has suffered, to the extent any was suffered, was caused either in whole or in part by the acts or omissions of Plaintiff (including, but not limited to, his consent or the knowing consent of another authorized to use his computer to the installation of any software provided by Defendant) and not as a result of any conduct by Defendant. Thus, Plaintiff is barred from recovery, or their recovery is reduced thereby.

Fourth Affirmative Defense

Defendant is not liable to Plaintiff for the acts of other persons or entities over whom it had no control or authority.

Fifth Affirmative Defense

If Plaintiff has sustained any injuries or incurred any damages, which Defendant denies, such injuries or damages, if any, were caused in whole or in part by acts or omissions of others for whose conduct Defendant is not responsible.

Sixth Affirmative Defense

Plaintiff may not recover on the claims pleaded in the Complaint because all or parts of the damages sought are too speculative and remote.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, ratification, acquiescence, laches, consent, and/or waiver.

Eighth Affirmative Defense

Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of unclean hands. Thus, Plaintiff has no right to injunctive relief.

Ninth Affirmative Defense

Plaintiff's claims for injunctive relief are barred because, *inter alia*, Plaintiff has an adequate remedy at law.

Tenth Affirmative Defense

Plaintiff's claims are barred in whole, or in part, due to his failure to mitigate any damages.

Eleventh Affirmative Defense

Plaintiff Simios is not an adequate representative for the purported Classes.

Twelfth Affirmative Defense

The purported Class definitions are improper and violate constitutional due process.

Thirteenth Affirmative Defense

As to each of the purported Classes asserted in the Complaint (i.e., "Class A" and "Class B"), the prerequisites to a Class Action pursuant to Federal Rule 23 cannot be met because, among other reasons, joinder of all members of the purported Class is not impracticable;

individual questions of law and fact predominate over common issues; the purported Class is overly broad; Plaintiff Simios' claims and/or defenses are not typical of the claims and/or defenses of other proposed Class members; the prosecution of separate actions by individual members of the purported Class would not create a risk of inconsistent or varying adjudications; Plaintiff Simios is not an adequate representative for the purported Class; final injunctive and/or declaratory relief are not appropriate with respect to the proposed Class as a whole; and a Class Action is not superior to other available methods for fair and efficient adjudication of the controversy.

Fourteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because any actions on the part of Defendant were taken with Plaintiff's consent and/or in accordance with the provisions of an agreement with Plaintiff.

Fifteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because any actions on the part of Defendant were taken in accordance with the provisions of the applicable End User License Agreement.

Sixteenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because Defendant owed no duty to Plaintiff.

Seventeenth Affirmative Defense

Plaintiffs' claims for recovery under 18 U.S.C. § 1030(a)(2) are barred because 18 U.S.C. § 1030(g) limits recovery in a civil action to violations of 18 U.S.C. § 1030(a)(5).

Eighteenth Affirmative Defense

Defendant adopts and incorporates by reference any affirmative defense asserted by any other defendant to this action to the extent that such affirmative defense applies to Defendant.

Reservation of Right to Assert Affirmative Defenses

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether additional, undiscovered affirmative defenses exist. Defendant reserves the right to assert additional affirmative defenses, if necessary, following the discovery process.

WHEREFORE, Defendant prays for judgment against Plaintiff LOGAN SIMIOS on all claims asserted against Defendant in the Complaint, and for such other and further relief as the Court may deem just and appropriate, including, but not limited to, awarding Defendant the costs and fees paid in defending this action.

Dated: November 4, 2005

Respectfully submitted,

By: /s/ Kristin J. Achterhof
One of the Attorneys for Defendant
180solutions, Inc.

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Spyware Warrior

Waging the war against spyware.

4/3/2005

SCRATCH A LIE, FIND A THIEF

A few days ago I published an interview with Jay Cross, former researcher for the Consortium of Anti-Spyware Technology Vendors, which got into hot water with the anti-spyware community and eventually collapsed after is granted membership to 180solutions. It seems that Jay Cross isn't the only one giving interviews these days. Wayne Porter just published an interview with 180solutions on his ReveNews blog. Wayne prefaces that interview with some thoughts of his own.

I strongly encourage everyone to read both pieces.

As I noted in an earlier blog entry, we've been waiting for 180's responses to Wayne's questions. It's particularly interesting now to get answers to Wayne's questio[illegible]as recently put on the hot seat by Sunbelt Software, which published a white pap[illegible]'s software and business practices. The white paper was later taken down at 180solutio[illegible]st.

Now that we have 180's answers, let's take a good hard look at them and see how well they reflect what we already know about the reality of 180solutions and how its software behaves.

Before diving in, let me point out that there is already quite a bit of information about 180 that's readily accessible on the web. Much of this valuable information comes from Ben Edelman, who has written several times on 180solutions:

180solutions Installation Methods and License Agreement

180 Talks a Big Talk, but Doesn't Deliver

The Effect of 180solutions on Affiliate Commissions and Merchants

Media Files that Spread Spyware

Who Profits from Security Holes?

Ben refuted a number of erroneous or misleading claims made by a 180 representative about its advertising in this discussion last summer at the ABestWeb forum.

Readers should also have a look at Andrew Clover's detailed write-up at doxdesk.com about nCase

With all the information out there about 180, it doesn't take a rocket scientist to figure out that the answers that 180 gave to Wayne's questions are deceptive, evasive, and full of spin. In many cases 180 doesn't even bother to answer the question that was actually asked. Instead, they go onto some pleasant-sounding PR tangent, probably hoping that no one will notice that they're not answering the questions. Even when they do answer, their language is so full of meaningless euphemisms and jargon that you practically need a knife to cut through all the B.S.

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So, let's take Wayne's twelve questions one-by-one and see wha[illegible]rom 180...

Questions 1 & 2: COAST

Question 1 asks what promises 180 made to COAST to get admitted. 180 responds by making some noises about improving "user notification, consent, and uninstall capabilities" and making "changes to both the application and distribution channel." That's fine as far as it goes, but they never do provide the specific details of their promises.

In Question 2, though, the heavy spin begins. Wayne asked why 180 is still publicly touting its membership in COAST when that organization collapsed, is no longer in operation, and has no credibility among experts and researchers in the anti-spyware community. 180 simply evades the whole point of the question, neither denying that it continues to brag about its COAST membership, yet never explaining why it's doing that.

It's quite clear at this point that 180 has always seen a public relations bonanza in the COAST admission, and has been eagerly flacking that membership ever since, even to other software vendors and advertisers who might not know that COAST collapsed. As Wayne noted in his question, Duane Jeffers reported that 180 was doing this at the "Game Developer's Conference" in San Francisco just a few weeks ago.

And until very, very recently, 180 had a banner on their web site announcing its admission into COAST (they took it down after Wayne submitted his questions to them). But it gets worse. Apparently 180 was bragging on its COAST membership in November, 2004 to a representative of the "Homepage-Host Group"—that's a full 2 months BEFORE it was actually actually admitted to COAST.

What's so funny about that communication with "Homepage-Host Group" is that the 180 rep goes out of his way to distance Zango from the 180search Assistant, pretty much admitting that the 180search Assistant (which is essentially the same application as Zango) is bad news.

As you can see, sometimes its takes a lot to cut through 180's spin.

Questions 3 & 4: nCase

Question 3 is fairly innocuous: it simply asked 180 to explain what happened to its old nCase software, which operated very similarly to the newer 180search Assistant and Zango Search Assistant.

Question 4, though, is a revealing followup to Question 3. It asks whether 180 notified users with the nCase software on their computers that the software was being upgraded to the 180search Assistant. It also asks **how** 180 notified those users that the software on their PCs was being upgraded.

The answer to this question is important because a lot of those nCase users might not have been willing users at all. The older nCase software was known to be stealth-installed on users computers, as Ben Edelman noted when he told the Seattle Post-Intelligencer last summer "N-Case is definitely installed without consumers' informed consent in many or most instances". Even Todd Sawicki of 180solutions admitted to the same Seattle PI reporter that stealth installs of 180's nCase software were going on.

> [Sawicki] said n-Case could get bundled with other free software programs without the company's knowledge. And that could lead to the n-Case software fastening to individual's computers without their knowledge, he said.

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If the nCase software was being stealth-installed on people's PCs, 180 should have at least notified them when it "upgraded" the nCase software to the 180search Assistant. In fact, if 180solutions wanted to be completely ethical, it shouldn't have even "upgraded" the nCase installs at all – it simply should have abandoned them, knowing that a lot of them could have come from illegal force-installs.

So what did 180 do with those older nCase installs? Did it notify users? 180 pointedly refuses to address the critical questions put to them by Wayne. It simply provides this terse one line response to Wayne's excellent questions:

> We upgraded the users at the same time we introduced the new, easier uninstall process.

In other words, they did NOT notify users—they simply "upgraded" the software on users' computers without telling them. Why would 180 do that? Oh, maybe, because if 180 told users that annoying advertising software had been installed on their computers behind their backs, the users might get pissed off and remove it? Could that be the reason?

What 180 did with the old nCase installations is most revealing, as we shall see in just a bit, because 180 is currently engaged in very similar shenanigans—"upgrading" older versions of the 180search Assistant to the new "COAST-certified" versions without notifying users, despite trying to give the mistaken impression that it's doing everything above-board. The leopard never really changes its spots, does it?

Questions 5-8: Stealth-Installs

180's responses to Question 5-8 are so full of deceptive, misleading B.S., you'd need to write a Ph.D dissertation to fully refute them. I'll try to keep this simple and straightforward.

In question 5, Wayne asked about the stealth-installs of 180's software, whether those are still happening, and what 180 is doing to stop them. Instead of answering the questions in a straightforward manner, 180 attempts to give the impression that it is vigorously policing its distributors. It even mentions the "industry-wide distribution monitoring service as in part envisioned by Jay Cross," which Jay discussed in his interview with me a few days ago. (One question for Jay and 180: why was 180 admitted to COAST before this "monitoring service" was created to actually verify the changes that 180 promised to COAST? Why wasn't 180's behavior actually verified before it was admitted to COAST and before 180 started bragging to the world about its admission into COAST?)

What 180 never does, though, is answer the meat of the question: are stealth installs still happening? As anyone in the anti-spyware community can tell you, they are still going on. (Note this comment from yesterday on Sunbelt's blog.) Sunbelt Software reports that it told 180solutions that those stealth installs are still going on. (I know this from reading the Sunbelt white paper while it was still available from the Sunbelt blog.) So why doesn't 180solutions admit that? Perhaps because it would cast doubt on the effectiveness of 180's efforts to police distributors?

180 also tries to give the impression that it is scrupulous in recruiting distributors, but this just isn't so. As Ben Edelman has reported, 180 has been reckless in soliciting distributors through unsolicited commercial email (UCE, "spam"). Even Todd Sawicki of 180 admitted that 180 isn't completely familiar with or in control of all the people and web sites distributing its software when he attempted to distance 180 from those rogue distributors and claim 180 wasn't responsible for their actions. Sawicki told the Los Angeles Times last year that those distributors are "guys in Bermuda, offshore. They're the online equivalent of spammers". Just how scrupulous could 180 be in recruiting distributors if this is the result?

January 2004
December 2003

Recent Entries

Rob Martinson, Walt Rines and the FTC - final chapter
Movieland.com sued by Washington State AG for spyware
[illegible] kickback [illegible] from InterCage/Atrivo IP
CastleCops responds to [illegible]
Stoller Trademark Troll Leo Stoller targets CastleCops
Spyware fighter under attack by trojan from DollarRevenue
Gimmy some Cash and Dollar Revenue!
180solutions and [illegible] again [illegible] buster and owes $4 million
180solutions at it again, this time with

Wayne's question 6 continues asking more about stealth-installs and what 180 is doing to stop rogue distributors. 180 again tries to give the impression of being pro-active in policing its distributors, but there are huge problems with that, as I just noted.

The more important part of 180's response comes when it claims that users of its new software are always given clear notice before installation. 180 says:

> First, we only distribute an installation file whose purpose is to verify a user's intent to install. Then once that consent has been confirmed through a prompt like the one below, the installer file will call to our servers and download the application. This will solve any going forward issues of old code circulating in various distribution channels as well as allow us to more tightly control our distributors.

Below that response is a screenshot of a "Example Prompt" displayed to users during installation.

For the moment, let's set aside the question of whether that prompt is always displayed when it should be and look at the actual language of the prompt itself. Let's see what kind of notice and disclosure that prompt actually provides. It reads:

> Easy Messenger lets you combine your AIM, MSN, Yahoo, and ICQ buddies into one convenient IM!
>
> Easy Messenger is powered by 180search Assistant, a program that helps conduct faster, more productive searches and helps keep online entertainment and downloads free and safe. When running, 180search Assistant can be accessed from an icon in your system tray. This program shows you an average of 2-3 keyword-based advertiser web pages daily.
>
> By selecting 'Finish' you agree to the Terms and Conditions of the end user license agreement.
>
> Download Easy Messenger for FREE now!

This is not much notice or disclosure. In fact, it's downright deceptive. "Powered by 180search Assistant" makes it sound like the chat software itself relies on 180search Assistant to actually connect users and allow them to chat. That's not true—180search Assistant is a separate advertising program, not part of the chat software itself.

In fact, 180 goes out of its way to avoid telling users what they really need to know—namely, that the 180search Assistant is an advertising program that will track their online surfing, transmit that information to 180, and pop up advertising on their desktops. But 180 never says that. Instead it relies on meaningless, misleading euphemisms like "program that helps conduct faster, more productive searches" and "2-3 keyword-based advertiser web pages daily".

It's easy to realize that most people simply wouldn't know what they are agreeing to by clicking through this kind of "prompt." How could they when 180 doesn't tell them in plain, straightforward language what they need to know?

I'm also struck by the assertion that 180search Assistant displays only 2-3 ads daily (a claim they repeat later in their answer to question 12). I've had 180search Assistant on my test computers—I certainly saw many more ads than that, and I only had it installed for a few hours. Maybe if you don't surf the web very much that might be true, but if you're browsing normally, you're going to get more than 2-3 ads a day.

a child porn browser and CoolWebSearch
DirectRevenue's dirty laundry
SpywareQuake
New SpywareQuake hijacking and installing malware
DirectRevenue lawsuits settled
Newest rogue anti-spyware installs adware
Windows Defender Beta 2 tested against real spyware
Australian press talks about Dale Begg-Smith and spyware
180solutions does it again
UK spyware victims can fight back
Been infected with spyware? Tell us your story

Categories

Question 7 is important, because it returns to the issue of what 180 is doing about existing installations of its software. As I noted earlier, 180 essentially admitted to Wayne that it had "upgraded" the older nCase software on people's PCs without notifying them, even though many of those people might have gotten the software through illegal stealth-installs. Now the question becomes what is 180 doing with old versions of its 180search Assistant—pre-COAST versions, in other words, that are still being distributed by 180's distributors.

180 leads off its answer with a claim that I find absolutely blood-boiling:

> The notion that many of our users came from improper installs is an urban legend started in the anti-spyware community. Unfortunately there is a fair amount of public hysteria in the press these days about malicious software. The reality is that 80% of so-called spyware are harmless cookies.

I literally screamed when I read that. For the next few hours, this phrase kept going through my mind, "LIAR! LIAR! PANTS ON FIRE!" Now that I've calmed down a bit, let me debunk this claim as simply as possible.

Ben Edelman has documented many such stealth installations and describes them on his web pages:

180solutions Installation Methods and License Agreement

180 Talks a Big Talk, but Doesn't Deliver

Who Profits from Security Holes?

The last page above even includes a video of one stealth-install. In its white paper, Sunbelt reports that it told 180solutions that it had encountered stealth-installs of the 180search Assistant well AFTER 180 asked Sunbelt to review its software and well AFTER 180 had argued that it had cleaned up its act. One of those stealth-installs reported by Sunbelt was through a Windows Media file, an installation method that was reported on back in January:

Adware Installed through WMA Files

WMP Adware: A Case Study in Deception

Media Files that Spread Spyware

I can now report researchers at Spyware Warrior have just documented yet another stealth-install of the 180search Assistant by Wallpapers4u.com, which uses security exploits and deceptive pop-ups to install a boatload of spyware and adware on users' computers, including the 180search Assistant. This stealth-install was thoroughly documented just yesterday by Webhelper, the watcher who sees and knows all about adware and spyware vendors.

Sorry, 180. Stealth-installs of your software aren't an "urban legend." They're real, they're happening right NOW, and you know it.

180 goes further in its response to question 7, though, again attempting to give the impression that users are always clearly notified of the presence of 180's software:

> We are currently upgrading all versions of our application to reflect the changes recommended by COAST. If, after the upgrades are made, we find new installs of our

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Your Privacy

> older product being distributed we will turn off those applications and pursue the distributor for violation of the Code of Conduct.
>
> 180solutions provides toll-free customer support so users can contact us directly with questions and concerns about our software, installation and uninstall methods. 180solutions doesn't intend to be installed on a computer where we are unwanted, and encourage any user who feels they received our software by mistake to follow uninstall instructions.

180 then offers yet another example screenshot of a prompt window that's supposed to notify users of the presence of 180's software.

It would be nice if 180 actually displayed that notice when it's supposed to—when, say, it's upgrading older versions of its software that are still being stealth-installed by rogue distributors. But it isn't, despite the impression 180 is trying to create in this answer to Wayne's question. As it did with the "upgrades" of nCase to 180search Assistant, 180 is silently updating the software installed on people's PCs without notifying them.

"But wait!" you ask. "Shouldn't that notice prompt display when the old 180search Assistant versions update to the new COAST-certified versions from 180's servers?"

You're right. That prompt (known technically as the "CBC Force prompt") should display. But it doesn't. How is that happening? This is all explained in the Sunbelt white paper, which was yanked at 180's request. Rather than try to explain this myself, let me quote Alex Eckelberry, who still has a good description on the Sunbelt blog of what's going on:

> Here's the quick and dirty:
>
> As part of 180's COAST certification, 180 agreed to a 'CBC Force Prompt'. This feature is designed to alert users to the installation of 180's software.
>
> This prompt is shown when a certain registry key is set to '0'. If it's set to '1', there is no prompt.
>
> This is a serious weakness in the 180 installer. It is trivially easy for a rogue affiliate to simply set the value to 1, and the 180 install sails through, with the end-user none the wiser.
>
> However, it appears that 180solutions is itself electing to bypass the 'CBC Force prompt' in order to avoid alerting users to the installation of 180's software, and the implications of this are serious.
>
> Sunbelt observed several installations of older versions of the 180search Assistant in which that software was updated to the latest version. After older versions of the 180search Assistant were 'stealth-installed' via a Windows Media Player file and via a Java applet at lyricsdomain.com, that software called out to 180's servers, and downloaded and installed the latest, COAST-certified version of the 180search Assistant.
>
> This behavior is especially disturbing because many of the installations that 180solutions is silently updating through this method are the possible products of "force-installs" of 180's software of users' PCs, where those users received no notice or warning whatsoever of the 180search Assistant.

Online (5)

Spyware Help Forums

Spyware Warrior Forums
SpywareInfo Forums
Javacool Software Forums
Wilders Security Forums
Tom Coyote Forums
Cexx.org Discussion Boards
Tech Support Guy Security Forum
BroadbandReports.com Security Forum
AdAware Support Forums from Lavasoft
SpyWare BeWare
Castle Cops Security Forums
Subratam Forums
ZerosRealm Forums
Tankweb.net Forums
TeMerc Internet Countermeasures Forums

More Spyware Warriors

SpywareInfo
TeMerc Internet Security Site

> Instead of alerting users to the presence of 180's software on their systems, 180 is updating those older software installations and versions to the latest 180search Assistant, allowing 180 to continue deriving economic benefit from those installations, entirely contrary to its publicly stated intention to clean up its distribution channels.

So, rather than display the force prompt when it updates old versions of the 180search Assistant, 180 is NOT displaying the force prompt and not alerting users to the presence of 180's software on their computers, just as it did when it silently updated the old nCase software to the newer 180search Assistant.

"Is this really still happening?" you ask, incredulous. "Even after Sunbelt alerted 180 that it had found out what 180 was doing?"

The sad answer is yes, it is still happening. The same researchers at Spyware Warrior who documented the stealth-install of 180search Assistant at Wallpapers4u.com report that during that stealth-install, the version of 180search Assistant originally installed is version 5—the pre-COAST version. That old version contacts 180's servers and downloads and installs the new version 6, which should display the force prompt. But it doesn't. The version 6 just installs and continues running as before, not alerting users to the installation of 180's software.

What's especially damning is how 180 handles Wayne's question 8, which directly asks whether that force prompt is displayed when old versions of the 180search Assistant are updated to the new COAST-certified version. Wayne asked:

> 8. There are reports the new 180search Assistant has a prompt screen that displays when the software installs for the first time. But what happens when an older version of the 180search Assistant calls the 180 servers to check for updates? Will those older versions be allowed to update to the new versions? If they are allowed to update, will the new prompt screen display?

You'd think this would be the opportunity for 180 to come clean on just what is happening with that force prompt. But no. 180 completely evades the question, saying only:

> See Response to Question 7

But as we just saw, the answer to question 7 doesn't directly address the issue—it merely tries to give the roundabout, mistaken impression that the force prompt is displayed without ever directly saying it is. That's a lie by omission. The net effect of these answers is that 180solutions has lied to Wayne, lied to Sunbelt, and lied to the world about what it's doing with that force prompt.

The leopard hasn't changed its spots at all. It's still "upgrading" unwitting "users" of its software, just like it did with the old nCase installations. Only now it's trying to use those upgrades to give the impression that everything's kosher when, in fact, everything is not kosher.

Question 9: Advertising & Privacy

At times 180's answers become so tortured that it's difficult even to make sense of them. For example, in question 9 Wayne asked about 180's advertising—which 180 doesn't like to talk about, preferring instead to talk about helping users "conduct faster, more productive searches" and other such misleading nonsense. 180 responds with this:

> All advertisements displayed by 180solutions software are opened in a second browser window and presented as a Web site, rather than an advertisement.

Ben Edelman
Eric L. Howes
Doxdesk
Parasites
Tom Coyote
Counterexploitation
Patrick M. Kolla
Merijn
Javacool
WebHelper
CARMA
Alliance of Security Analysis Professionals (ASAP)
ParasiteWare.com
Wilders.org
Security Advisors
NoMoreSpyware
Scamware.com
Thiefware.com
MickeyTheMan
TomCat

Tutorials and Info

Spybot Search & Destroy Help
Spybot Search & Destroy Tutorial
HijackThis Detailed Tutorial
CoolWebSearch Chronicles
Hijack Prevention
So how did I get infected in the first place?
Spyware and other Internet Nuisances
Bleeping Computer Tutorials
Javacool

Huh? I defy anyone to make sense of that statement. All advertisements displayed by 180solutions software are not displayed as advertisements? What is 180 trying to say here? That they don't display advertising? But that's nonsense. And so is their answer.

180 goes on to claim that its advertising is clearly labeled, when in fact its advertising is almost indistinguishable from normal web browser windows. And, as Ben Edelman pointed out to 180solutions last summer, even the branding in the title bar that does exist may be replaced by other text if the ad page that opens is redirected. See the full discussion at ABestWeb for still more debunking by Ben of false claims made by 180 for its advertising practices.

Strangely, in its answer 180 makes a claim that its own End User License Agreement and Privacy Policy refute. 180 tells Wayne:

> There is no profiling and no capture of any browsing history.

That's just plain false. The 180search Assistant EULA flatly contradicts this statement:

> 180search Assistant will periodically direct you to our sponsors' websites. 180search Assistant will collect information about the websites you visit, but will not collect any information that will be used by 180solutions to identify you personally. The information that 180search Assistant collects and transmits to 180solutions will be used to provide you with access to comparative shopping opportunities at times when we consider them most relevant. [...]
>
> 5. Display of Advertising. The Software will collect information about you and the websites you visit ("Usage Data"), but will not collect information that will be used to identify you personally. This information will be used to provide you with comparative shopping opportunities when they are most relevant. By installing and/or using the Software you grant permission for 180solutions to periodically display sponsors' websites to you, and to collect, use and disclose the Usage Data The frequency of the advertisements will vary depending on your use of the Internet. You acknowledge that the Software includes an anonymous user ID and an electronic cookie that enables 180solutions to collect such information and to display advertising targeted to you. A "cookie" is a small amount of data that 180solutions' servers transfer to your browser and that only 180solutions' servers can read. You understand that 180solutions does not control your interaction with the web sites and advertisements displayed to you and we assume no responsibility for their content or privacy practices and policies. [...]
>
> 8. Collection of Information. 180solutions collects and uses certain information about you from your use of the Software. By installing the Software, you grant permission for 180solutions to collect this information, including the websites you visit while connected to the Internet.

180's answer to Wayne is also flatly contradicted by its own Privacy Policy:

> By installing 180search Assistant, you grant permission for 180solutions to periodically display targeted websites, to collect certain information, including the websites you visit while connected to the Internet, and to use that information as described herein. 180solutions will not use any of the information 180search Assistant collects to identify you personally.
>
> 180search Assistant. The 180search Assistant software ("180search Assistant") is a permission based search assistant application that provides access to a wide range of

Software Knowledge Base
Rogue/Suspect Anti-Spyware Products & Web Sites
Anti-Spyware Tests by Eric L. Howes
Anti-Spyware Feature Comparison by Eric L. Howes
Getting Help with Spyware
Internet Explorer Options: Privacy & Security Settings

Blogs of Interest
VitalSecurity.org
Technit Sunbelt Blog
Spyware Confidential
Spyware Warrior
ReveNews: News Articles: Business: Wayne Porter
Flying Hamster Security News
Technology & Marketing Law Blog
Security Fix
The Gripe Line
Weblog
Ed Foster
Orange Crate:

websites, applications and information. 180search Assistant will periodically direct you to our sponsors' websites. The information that 180solutions collects under this privacy policy allows 180search Assistant to provide you with content and advertising that is targeted to your interests.

What We Collect. When the 180search Assistant software is actively running on your computer, it generates logs of your web browsing activity, including web pages you have visited and the order in which you visited these pages. These logs are then uploaded to 180solutions' servers, along with an anonymous user ID assigned to the 180search Assistant software installed on your computer (your "Anonymous User ID"). We use these logs for market research purposes and to allow 180search Assistant to provide you with content specifically targeted to your interests at the time when the content is relevant. 180solutions stores these logs on our servers, for our use. We may aggregate information from these logs and share the aggregate data with third parties. The 180search Assistant software will also put a "cookie" on your machine so that we are able to recognize you and display appropriate targeted websites. A Cookie is a small amount of data that 180solutions' servers transfer to your browser and that only 180solutions' servers can read.

The profiling may be anonymous, but it is happening, and the user's browsing history is certainly being captured and uploaded to 180. Why does 180 lie like this when it has to know that its own EULA and Privacy Policy contradict what it's trying to tell people?

Questions 10-12: Wrap-up

Rather than go through the rest of 180's responses, which are mostly PR puffery and blatant nonsense, let me pick out a few claims that are demonstrably false.

In its response to Wayne's last question, 180 claims:

> It's important to note that 180solutions exceeds all standards either proposed in pending legislation or in enacted laws for downloadable applications/Internet advertising.

Wrong. HR29 (the Spy Act sponsored by Rep. Mary Bono), which was recently sent to the floor of the House and was actually passed on the floor of the House last year, has certain requirements for the notice and disclosure offered by "information collection programs" such as the 180search Assistant. Section 3.c.1.B specifies that programs like 180's software display a notice during installation:

> The notice contains one of the following statements, as applicable, or a substantially similar statement:
>
> (i) With respect to an information collection program described in subsection b.1.A: 'This program will collect and transmit information about you. Do you accept?.
>
> (ii) With respect to an information collection program described in subsection .b.1.B: 'This program will collect information about Web pages you access and will use that information to display advertising on your computer. Do you accept?
>
> (iii) With respect to an information collection program that performs the actions described in both subparagraphs (A) and (B) of subsection b.1.: 'This program will collect and transmit information about you and will collect information about Web pages you access and use that information to display advertising on your computer. Do you accept?

The Mysteryman's Chronicles
Spyware Daily
Tenebril Spyware Blog
Security Ticker

General Links

Spyware Warrior
Home Page
Computer Cops
Home PC Firewall Guide

Comment Policy & Disclaimer

All comments reflect the opinions of the commenter. Management takes no responsibility for the views expressed in comments.

Disclosure

In April 2005, I began doing part time consulting work for Sunbelt Software, makers of CounterSpy, as an independent contractor.

Copyright Notice

Take a look at 180's own screenshot of the notice screen for "Easy Messenger". That notice clearly doesn't fulfill HR 29's requirements, because it doesn't fully disclose all the information it needs to and uses misleading euphemisms (as I discussed earlier). If and when HR 29 does pass the full House and is enacted into law, 180solutions will be out of compliance with the federal law of the land regarding notice and disclosure for installations of spyware and adware programs.

In the same answer 180 also claims:

> The company was the first keyword search advertising provider to put an icon on the users desktop and system tray, clearly label each add, list our application in system processes, and make it simple for users to uninstall.

Again, I have to wonder why 180 makes statements that are so easily refuted. 180 is hardly the first contextual advertising company to display a tray icon for its software. Several other contextual advertising companies do this, including Claria/Gator, which has used tray icons for its applications since at least June 2002, when Ben Edelman captured the screenshot on page 1 of this PDF document.

Conclusion

Just what was 180 smoking when it compiled these responses to Wayne's straightforward questions? Who did it think it was going to deceive?

Sadly, it could very well be that 180 has successfully bamboozled some anti-spyware vendors. In response to question 11, which asked whether 180 was getting removed from anti-spyware detections, 180 claims:

> So far a handful has removed the latest versions of our applications.

Oh, really? Who might that be? Inquiring minds want to know! We know it wasn't Sunbelt. Whoever did remove these newer COAST-certified versions of 180's software simply got taken to the cleaners, that's for sure.

One final note: I have relied in part for my information on the Sunbelt white paper, which I downloaded when it was still available from the Sunbelt blog. At 180's request, Sunbelt has temporarily removed that white paper from its site. Hopefully, Sunbelt will restore that white paper, which includes plenty of information that 180 doesn't want you to know about. Now that I've seen 180's interview with Wayne Porter, I think I know why.

Update on March 5: Wayne Porter has posted a fascinating interview with the CTO of a large marketing company—about 180solutions and why many companies won't go near them now.

180solutions An Economic Interview

Said Suzi @ 8:04 pm
| Permalink | Filed under: Spyware/Adware in the News

RSS feed for comments on this post.

Comments

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:: **Trackbacks/Pingbacks** ::

1. **Wayne Porter on 180**
   To those of you following the whole "is 180 Solutions making products that deserve the adware/spwyare moniker?" debate, Wayne Porter just posted some interesting stuff on his blog. Mr. Porter, who runs a company that makes a competitor to our Counter…

   Trackback by Sunbelt Blog — 4/4/2005 7:31 am | permalink

2. **Merchants, Investors and thoughts on 180solutions**
   Wayne Porter has an opened an interesting discourse with 180solutions recently. It had been picked up by Spyware Warrior, Shawn Collins, and others. Stewardship of the internet is the heart of the matter over Zango, n-Case and other 180solutions' appl…

   Trackback by ReveNews: Beth Kirsch — 4/5/2005 11:40 am | permalink

3. […] some decidedly questionable tactics in the past and although they claim to be clean now, not everyone is in agreeance with them. Sean Sundwall has been instr […]

   Pingback by HTMLfixIT Web developer news. » Microsoft PR man now fights for "spyware" company — 6/2/2005 3:50 pm | permalink

:: **Comments** ::

1. What a load of crap. I've found 180solutions on a few computers I've cleaned up, and these people had no idea they had it. They hadn't even downloaded any "Easy Messenger."

   As far as 80% of spyware being "cookies"… I think not…I did a lady's computer about a month ago…ran Spybot Search & Destroy, and came up with 155 pieces of spyware, only a few of which were cookies. She had 180solutions, CoolWebSearch, you name it, she had it. I've seen computers with as much as 500+ pieces, but this woman had the worst ones out there, and she had no clue she had any of it.

   On a side note, what a shame this company is based out of Seattle…

   comment by Bonnie — 4/4/2005 @ 6:37 am

2. From ::scratch-a-lie-find-a-thief::
   "I've had 180search Assistant on my test computers—I certainly saw many more ads then that,"

   Do you mean "than that"? 😉

   comment by Alex — 4/4/2005 @ 7:14 am

3. Alex, I corrected the error.

comment by suzi — 4/4/2005 @ 7:27 am

4. Great summary Suzi – thanks for writing all that up, saves me the time of typing the same thing!

   I can confirm that I have observed stealth-installs of nCase (or whatever 180 want to call it) as frequently as ever over the last few months, up to and including 100%-unsolicited no-notice installation by browser security holes in pop-up ads.

   I have also observed as recently as two days ago an nCase installation loaded by IE exploit 'update' itself to the new 6.x version entirely without announcing its existence.

   If 180 really think they are effectively policing their 'affiliates' they are in cloud cuckoo land. The same sources have been using stealth installs over **years**.

   comment by And Clover — 4/4/2005 @ 10:49 am

5. What if you were wrong Suzi? Don't you realize that Ben Edelman is paid by various companies to be a critic of 180? It's the way he makes money – he is not a credible source, he's a hired gun. In fact the anti-spyware legal community held a symposium last week and purposely didnt invite him.

   comment by Jack — 4/4/2005 @ 11:22 am

6. Jack:

   Please. All of Ben Edelman's key test methodologies and results are publicly published and independently verifiable. In fact, I have examined many of Ben Edelman's claims myself and verified them, including the claims he makes about various characteristics and behavior of 180solutions' software.

   As for this business about purposely not inviting Ben Edelman to a symposium held by the "anti-spyware legal community" last week, I'm assuming you mean this one:

   http://www.law.berkeley.edu/institutes/bclt/spyware/speakers.html

   So, let's get this straight. They wouldn't invite Ben Edelman because he's a "hired gun." But they would invite Reed Freeman, "chief privacy officer" for an adware firm (Claria), and Christine Varney, who's acted as "advisor and spokesperson" for the Online Privacy Alliance (OPA)...

   http://www.privacyalliance.org/news/05121999.shtml

   The OPA, it ought to be noted, is a well-known industry front group that has no interest in protecting consumer privacy and every interest in obstructing meaningful action anywhere it might be taking place in order to protect the interests of its members, which include the likes of 180solutions, Claria, Doubleclick, and WhenU.

   With such an impressive crew in attendance, Ben Edelman ought to be honored that he was purposely not invited. Indeed, looking over the web site for that event, it's quite clear that it was simply COAST revisited—only with more lawyers.

And who, might I ask, do you represent, Jack? Please don't tell me you're a "hired gun," too, because we can only have so many of those awful people mentioned in one blog entry. (We do have our standards around here.)

And while I'm at it, Jack, just what did you think of the fact that 180 told Wayne Porter that "There is no profiling and no capture of any browsing history," when its own EULA and Privacy Policy clearly say otherwise? Does one have to be a "hired gun" to point out a lie like that?

You're going to have to do better than this, Jack.

Eric L. Howes

comment by Eric L. Howes — 4/4/2005 @ 1:31 pm

7. "Jack",

   Ben is not for hire; and the OPA not inviting is meaningless. Note that the OPA's members are clearly listed here.

   comment by Alex Eckelberry — 4/4/2005 @ 2:38 pm

8. Ben Edelman is a hired gun? Now who's smoking crack?

   Edelman, regardless of whom he is "paid by", actually documents his findings, unlike you. He doesn't just say "stealth install", he makes available a video clip of the stealth install happening. His credibility is unimpeachable. You however are just a spyware shill named Jack. If you are Jack. Liar.

   comment by Steve — 4/4/2005 @ 3:06 pm

9. Jack,

   I'm not a "hired gun." To the extent that I've written about 180 on my web site, this work has been without payment from anyone, and not even at anyone's request. There's no disputing that some folks then hire me to do other work—for example, to figure out how 180 is harming them and how they can make it stop. But there's no shame in this. And my work speaks for itself; I publish my methodology and my specific findings, so others can replicate my work.

   As to this past weekend's conference, it's interesting that you describe my absence as the conference "purposely [not] invit[ing]" me. How do you know? Who says so? I would think that's something only the organizers of the conference and I would know. For all the general public knows, I had other (conflicting) commitments or otherwise couldn't or didn't care to attend. I guess it would be easier to evaluate your claim if you provided some basis for it, e.g. how you know what you claim occurred.

   comment by Ben Edelman — 4/4/2005 @ 4:33 pm

10. Interesting how someone tried to turn this away from 180 Solutions and onto Ben instead. I think I have my next blog entry...!

comment by Paperghost — 4/5/2005 @ 12:26 am

11. I'm the interviewee in Wayne Porter's follow up and have worked with Ben Edelman, unofficially, to help me clarify some of the issues in the spyware industry. I don't know who "Jack" is, but Ben Edelman is certainly above reproach. He has done nothing in my case but offer free information regarding how spyware works and how to detect it, and does this because he believes it is the right thing to do. The fact that some businesses pay him to clean up their advertising channels in no way creates a conflict of interest, and in fact he has refused my offers to further monetize his services. He is the whitest of white hats.

comment by Jeff Doak — 4/6/2005 @ 12:54 pm

Leave a Comment

Sorry, comments are closed at this time.